

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1666

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AN ACT to amend the Indiana Code concerning alcohol and tobacco.

*Be it enacted by the General Assembly of the State of Indiana:*

SECTION 1. IC 7.1-2-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. ~~Qualifications and Appointment~~. The prosecutor shall be appointed by the governor for a term of four (4) years to be served at the pleasure of the governor. The prosecutor shall be a resident of the state and a practicing member of the Indiana bar. ~~for at least five (5) years preceding his appointment~~.

SECTION 2. IC 7.1-3-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A permit of any type issued by the commission, except as provided in subsections (b) and (f) or unless otherwise provided in this title, shall be in force for one (1) calendar year only, including the day upon which it is granted. At the end of the one (1) year period the permit shall be fully expired and null and void.

(b) Notwithstanding subsection (a), ~~in a county containing a consolidated city~~, a permit that is subject to section 5.5 or 5.6 of this chapter is effective for two (2) calendar years, including the day upon which the permit is granted. However, a local board may recommend to the commission that the permit be issued or renewed for only a one (1) year period. The commission may issue or renew a permit for the period recommended by the local board.

(c) A permittee who is granted a two (2) year permit under

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subsection (b) or subsection (f) is liable for any annual fees assessed by the commission. The annual fee is due on the annual anniversary date upon which the permit was granted.

(d) If the commission grants a two (2) year permit, the commission may ask a local board to hold a hearing to reconsider the duration of a permittee's permit. A hearing held under this subsection is subject to section 5.5 or 5.6 of this chapter. A local board shall hold the hearing requested by the commission within thirty (30) days before the permittee's next annual anniversary date and forward a recommendation to the commission following the hearing.

(e) If a permittee is granted a permit for more than one (1) year, the commission ~~may~~ **shall** require the permittee to file annually with the commission the information required for an annual permit renewal.

(f) Notwithstanding subsection (a), the following are effective for two (2) calendar years, including the day upon which the permit is granted:

- (1) A beer wholesaler's permit issued under IC 7.1-3-3-1.
- (2) A wine wholesaler's permit issued under IC 7.1-3-13-1.
- (3) A liquor wholesaler's permit issued under IC 7.1-3-8-1.

SECTION 3. IC 7.1-3-1-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) It is lawful for an appropriate permittee, unless otherwise specifically provided in this title, to sell alcoholic beverages each day Monday through Saturday from 7 a.m., prevailing local time, until 3 a.m., prevailing local time, the following day. Sales shall cease wholly on Sunday at 3 a.m., prevailing local time, and not be resumed until the following Monday at 7 a.m., prevailing local time.

(b) It is lawful for the holder of a ~~supplemental~~ retailer's permit to sell the appropriate alcoholic beverages **for consumption on the licensed premises only** on Sunday from 10 a.m., prevailing local time, until 12:30 a.m., prevailing local time, the following day.

(c) It is lawful for the holder of a permit under this article to sell alcoholic beverages at athletic or sports events held on Sunday upon premises that:

- (1) are described in section 25(a) of this chapter;
- (2) are a facility used in connection with the operation of a paved track more than two (2) miles in length that is used primarily in the sport of auto racing; or
- (3) are being used for a professional or an amateur tournament; beginning one (1) hour before the scheduled starting time of the event or, if the scheduled starting time of the event is 1 p.m. or later, beginning at noon.

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(d) It is lawful for the holder of a valid beer, wine, or liquor wholesaler's permit to sell to the holder of a valid retailer's or dealer's permit at any time.

SECTION 4. IC 7.1-3-1-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 18. ~~Publication of Notice.~~ (a) Whenever, under the provisions of this title, publication of notice of application for a permit is required, the publication shall be made in ~~two (2) newspapers of opposite political faith published in the city, town or township~~ **one (1) newspaper of general circulation published in the county** where the permit is to be in effect.

~~(b) If there is only one (1) newspaper published in the city or town, the notice shall be published in that newspaper and in another newspaper of opposite political faith published in the county; if there is one, and if not, then in any newspaper of general circulation published in the county.~~

~~(c) If there is no newspaper published in the city or town where the permit is to be in effect, then the publication shall be made in two (2) newspapers published in the city or town nearest to the city or town where the permit is to be in effect.~~

~~(d)~~ (b) Publication required by this section may be made in any newspaper of general circulation published one (1) or more times each week.

~~(e)~~ (c) The rates which shall be paid for the advertising of a notice required under this title shall be those required to be paid in case of other notices published for or on behalf of the state.

SECTION 5. IC 7.1-3-3-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The holder of a beer wholesaler's permit may purchase and import from the primary source of supply, possess, and sell at wholesale, beer and flavored malt beverages manufactured within or without this state.

(b) A beer wholesaler permittee may possess, transport, sell, and deliver beer to:

- (1) another beer wholesaler authorized by the brewer to sell the brand purchased;
- (2) a consumer; or
- (3) a holder of a beer retailer's permit, beer dealer's permit, temporary beer permit, dining car permit, boat permit, airplane permit, ~~or supplemental caterer's permit; or supplemental~~ **retailer's permit;**

located within this state. The sale, transportation, and delivery of beer shall be made only from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery.

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(c) Delivery of beer to a consumer shall be made in barrels only with the exception of the beer wholesaler's bona fide regular employees, who may purchase beer from the wholesaler in bottles, cans, or any other type of permissible containers in an amount not to exceed forty-eight (48) pints at any one (1) time.

(d) The importation, transportation, possession, sale, and delivery of beer shall be subject to the rules of the commission and subject to the same restrictions provided in this title for a person holding a brewer's permit.

(e) The holder of a beer wholesaler's permit may purchase, import, possess, transport, sell, and deliver any commodity listed in IC 7.1-3-10-5, unless prohibited by this title. However, a beer wholesaler may deliver flavored malt beverages only to the holder of one (1) of the following permits:

(1) A beer wholesaler or wine wholesaler permit, if the wholesaler is authorized by the primary source of supply to sell the brand of flavored malt beverage purchased.

(2) A wine retailer's permit, wine dealer's permit, temporary wine permit, dining car wine permit, boat permit, airplane permit, **or** supplemental caterer's permit. ~~or supplemental retailer's permit.~~

(f) A beer wholesaler may:

(1) store beer for an out-of-state brewer described in IC 7.1-3-2-9 and deliver the stored beer to another beer wholesaler that the out-of-state brewer authorizes to sell the beer;

(2) perform all necessary accounting and auditing functions associated with the services described in subdivision (1); and

(3) receive a fee from an out-of-state brewer for the services described in subdivisions (1) through (2).

SECTION 6. IC 7.1-3-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The holder of a liquor wholesaler's permit shall be entitled to sell liquor at wholesale.

(b) A liquor wholesaler shall be entitled to purchase liquor within this state from a person who holds a distiller's permit, a rectifier's permit, or a liquor wholesaler's permit. A liquor wholesaler also may purchase liquor outside this state from the primary source of supply and, from that source, may transport and import liquor into this state.

(c) A liquor wholesaler may sell, transport, and deliver liquor only to a person who, under this title, holds a:

(1) liquor retailer's permit;

(2) supplemental caterer's permit;

~~(3) supplemental retailer's permit;~~

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- ~~(4)~~ (3) liquor dealer's permit; or
- ~~(5)~~ (4) liquor wholesaler's permit.

The sale, transportation, and delivery of liquor shall be made only from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery, and only in permissible containers and is subject to the rules of the commission fixing the quantity which may be sold or delivered at any one (1) time.

SECTION 7. IC 7.1-3-12-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The holder of a farm winery permit:

- (1) is entitled to manufacture wine and to bottle wine produced by the permit holder's farm winery;
- (2) is entitled to serve complimentary samples of the winery's wine on the licensed premises;
- (3) is entitled to sell the winery's wine on the licensed premises to consumers either by the glass, or by the bottle, or both;
- (4) is entitled to sell wine by the bottle or by the case to a person who is the holder of a permit to sell wine at either wholesale or retail;
- (5) is exempt from the provisions of IC 7.1-3-14;
- (6) is entitled to advertise the name and address of any retailer or dealer who sells wine produced by the permit holder's winery;
- (7) for wine described in IC 7.1-1-2-3(a)(4):
  - (A) may allow transportation to and consumption of the wine on the licensed premises; and
  - (B) may not sell, offer to sell, or allow the sale of the wine on the licensed premises; ~~and~~
- (8) is entitled to purchase and sell bulk wine as set forth in this chapter; **and**
- (9) is entitled to sell wine as authorized by this section for carryout on Sunday.**

(b) With the approval of the commission, a holder of a permit under this chapter may conduct business at a second location that is separate from the winery. At the second location, the holder of a permit may conduct any business that is authorized at the first location, except for the manufacturing or bottling of wine.

(c) With the approval of the commission, a holder of a permit under this chapter may, individually or with other permit holders under this chapter, participate in a trade show or an exposition at which products of each permit holder participant are displayed, promoted, and sold. The commission may not grant approval under this subsection to a holder of a permit under this chapter for more than nine (9) days in a

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calendar year.

SECTION 8. IC 7.1-3-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) The holder of a wine wholesaler's permit may purchase, import, and transport wine, brandy, or flavored malt beverage from the primary source of supply. A wine wholesaler may export and transport wine, brandy, or flavored malt beverage by the bottle, barrel, cask, or other container, to points outside Indiana. A wine wholesaler is entitled to sell, furnish, and deliver wine or flavored malt beverage from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery to a wine wholesaler, a wine retailer, a supplemental caterer, a temporary wine permittee, ~~a supplemental retailer~~, and a wine dealer, but not at retail. A wine wholesaler may sell, furnish, and deliver brandy from inventory that has been located on the wholesaler's premises before the time of invoicing and delivery, but not at retail, only to a person who holds a liquor retailer's permit, a supplemental caterer's permit, ~~a supplemental retailer's permit~~, or a liquor dealer's permit. A wine wholesaler also may sell and deliver wine to a consumer, at the consumer's residence, in bottles or other permissible containers in a quantity that does not exceed fifty (50) gallons at any one (1) time.

(b) As used in this section, "brandy" means:

- (1) any alcoholic distillate described in 27 CFR 5.22(d) as in effect on January 1, 1983; or
- (2) a beverage product that:
  - (A) is prepared from a liquid described in subdivision (1);
  - (B) is classified as a cordial or liqueur as defined in 27 CFR 5.22(h) as in effect on January 1, 1997; and
  - (C) meets the following requirements:
    - (i) At least sixty-six and two-thirds percent (66 2/3%) of the product's alcohol content is composed of a substance described in subdivision (1).
    - (ii) The product's label makes no reference to any distilled spirit other than brandy.
    - (iii) The product's alcohol content is not less than sixteen percent (16%) by volume or thirty-two (32) degrees proof.
    - (iv) The product contains dairy cream.
    - (v) The product's sugar, dextrose, or levulose content is at least twenty percent (20%) of the product's weight.
    - (vi) The product contains caramel coloring.

(c) Nothing in this section allows a wine wholesaler to sell, give, purchase, transport, or export beer (as defined in IC 7.1-1-3-6) unless

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the wine wholesaler also holds a beer wholesaler's permit under IC 7.1-3-3-1.

(d) A wine wholesaler that also holds a liquor wholesaler's permit under IC 7.1-3-8 may not:

- (1) hold a beer wholesaler's permit under IC 7.1-3-3;
- (2) possess, sell, or transport beer; or
- (3) sell more than one million (1,000,000) gallons of flavored malt beverage during a calendar year.

SECTION 9. IC 7.1-3-18-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The commission may issue a temporary bartender's permit to any person who is at least twenty-one (21) years of age for any of the following purposes:

- (1) To be a bartender at any activity or event for which a temporary permit is issued under IC 7.1-3-6 (beer) or IC 7.1-3-16 (wine).
- (2) To be a bartender at a nonprofit club for a maximum of four (4) days in a year during the same time that a fair or festival is held in the community where the club is located. However, the commission may only issue a maximum of twenty (20) temporary bartender's licenses for use in one (1) club during one (1) fair or festival.

(b) A temporary bartender's permit is the only license that is required for persons to serve as bartenders for the purposes described in subsection (a).

(c) A temporary bartender at a club may dispense any alcoholic beverage that the club's permit allows the club to serve.

(d) The fee for a temporary bartender's permit is ~~four~~ **five** dollars ~~(\$4): (\$5)~~.

(e) The commission may by rule provide procedures for the issuance of a temporary bartender's permit.

(f) The commission shall revoke a permit issued to a bartender under this section if the bartender is convicted of a Class B misdemeanor for violating IC 7.1-5-10-15(a).

SECTION 10. IC 7.1-3-18.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A person who desires a certificate must provide the following to the commission:

- (1) The applicant's name and mailing address and the address of the premises for which the certificate is being issued.
- (2) A fee of ~~fifty dollars (\$50):~~ **two hundred dollars (\$200)**.

(b) A separate certificate is required for each location where the tobacco products are sold or distributed.

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(c) The fees collected under this section shall be deposited in the enforcement and administration fund under IC 7.1-4-10.

SECTION 11. IC 7.1-3-18.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A certificate issued by the commission under this chapter must contain the following information:

- (1) The certificate number.
- (2) The certificate holder's name.
- (3) The permanent location of the business or vending machine for which the certificate is issued.
- (4) The expiration date of the certificate.

(b) A certificate is:

- (1) valid for ~~one (1) year~~ **three (3) years** after the date of issuance, unless the commission suspends the certificate; and
- (2) nontransferable.

SECTION 12. IC 7.1-3-19-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. ~~Publication of Notice of Investigation.~~ The commission shall cause ~~two (2) notices~~ **one (1) notice** of the pending investigation to be published in a newspaper in accordance with the provisions of IC ~~1971~~, 7.1-3-1-18. The publication of ~~notices~~ **the notice** shall be ~~one (1) calendar week~~ **at least fifteen (15) thirty (30)** days before the investigation.

SECTION 13. IC 7.1-3-20-2.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2.5. ~~(a) This section applies notwithstanding IC 7.1-3-16.5.~~

~~(b)~~ **(a)** This section applies to each holder of a permit issued under section 2, 3, or 4 of this chapter.

~~(c)~~ **(b)** A permit holder may sell alcoholic beverages under the terms of the permit on any twelve (12) Sundays during a calendar year.

~~(d)~~ **(c)** Sales under this section may be made only for on-premises consumption.

SECTION 14. IC 7.1-3-20-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. The commission may issue a three-way permit for the sale of alcoholic beverages to the proprietor of a restaurant which is located outside the corporate limits of an incorporated city or town if the restaurant meets the additional requirements:

- (1) It shall be a table service restaurant in which a patron is seated at a table and is served by a waiter or waitress and the food served is predominantly consumed on the premises.
- (2) It shall be sufficiently served by adequate law enforcement at

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its premises.

(3) If it does business during seven (7) or more months of each year, it shall have had an annual gross food sales of at least one hundred thousand dollars (\$100,000) for the three (3) years immediately preceding its application for a permit unless the permittee is the proprietor of a recreational facility such as a golf course, bowling center, or similar facility ~~to which IC 7.1-3-16.5-2(c) applies~~ **that has the recreational activity and not the sale of food and beverages as the principal purpose or function of the person's business.**

(4) If it does business during six (6) or fewer months of each year, it shall have had average monthly gross food sales of at least eight thousand five hundred dollars (\$8,500) for each month it did business for the three (3) years immediately preceding its application for a permit.

SECTION 15. IC 7.1-3-20-13.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13.5. Notwithstanding sections 12 and 13 of this chapter, ~~IC 7.1-3-16.5-2(c), and IC 7.1-3-16.5-3(c)~~, there is no annual or monthly gross food sales requirement to obtain a three-way permit ~~or a supplemental retailer's permit~~ for the sale of alcoholic beverages in a restaurant that is:

- (1) open to the general public; and
- (2) located on:
  - (A) the grounds of a regulation size golf course that has at least nine (9) holes; or
  - (B) the premises of a tennis club that has at least eight (8) regulation size tennis courts.

SECTION 16. IC 7.1-3-20-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 16. (a) A permit that is authorized by this section may be issued without regard to the quota provisions of IC 7.1-3-22.

(b) The commission may issue a three-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant facility in the passenger terminal complex of a publicly owned airport which is served by a scheduled commercial passenger airline certified to enplane and deplane passengers on a scheduled basis by a federal aviation agency. A permit issued under this subsection shall not be transferred to a location off the airport premises.

(c) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a

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restaurant within a redevelopment project consisting of a building or group of buildings that:

- (1) was formerly used as part of a union railway station;
- (2) has been listed in or is within a district that has been listed in the federal National Register of Historic Places maintained pursuant to the National Historic Preservation Act of 1966, as amended; and
- (3) has been redeveloped or renovated, with the redevelopment or renovation being funded in part with grants from the federal, state, or local government.

A permit issued under this subsection shall not be transferred to a location outside of the redevelopment project.

(d) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant:

- (1) on land; or
- (2) in a historic river vessel;

within a municipal riverfront development project funded in part with state and city money. A permit issued under this subsection may not be transferred.

(e) The commission may issue a three-way, two-way, or one-way permit to sell alcoholic beverages for on premises consumption only to an applicant who is the proprietor, as owner or lessee, or both, of a restaurant within a renovation project consisting of a building that:

- (1) was formerly used as part of a passenger and freight railway station; and
- (2) was built before 1900.

The permit authorized by this subsection may be issued without regard to the proximity provisions of IC 7.1-3-21-11.

(f) The commission may issue a three-way permit for the sale of alcoholic beverages for on premises consumption at a cultural center for the visual and performing arts to a town that:

- (1) is located in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000); and
- (2) has a population of more than twenty thousand (20,000) but less than twenty-three thousand (23,000).

**(g) The commission may issue a three-way permit for the sale of alcoholic beverages for on premises consumption to an applicant who will locate as the proprietor, as owner or lessee, or both, of a restaurant within an economic development area under IC 36-7-14**

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in:

- (1) a town with a population of more than twenty thousand (20,000); or
- (2) a city with a population of more than twenty-seven thousand (27,000) but less than twenty-seven thousand four hundred (27,400);

located in a county having a population of more than ninety thousand (90,000) but less than one hundred thousand (100,000). The commission may issue not more than five (5) licenses under this section to premises within a municipality described in subdivision (1) and not more than five (5) licenses to premises within a municipality described in subdivision (2). The commission shall conduct an auction of the permits under IC 7.1-3-22-9, except that the auction may be conducted at any time as determined by the commission. Notwithstanding any other law, the minimum bid for an initial license under this subsection is thirty-five thousand dollars (\$35,000), and the renewal fee for a license under this subsection is one thousand three hundred fifty dollars (\$1,350). Before the district expires, a permit issued under this subsection may not be transferred. After the district expires, a permit issued under this subsection may be renewed, and the ownership of the permit may be transferred, but the permit may not be transferred from the permit premises.

SECTION 17. IC 7.1-3-21-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 15. (a) The commission shall not issue, renew, or transfer a wholesaler, retailer, dealer, or other permit of any type if the applicant:

- (1) is seeking a renewal and the applicant has not paid all the property taxes under IC 6-1.1 **and the innkeeper's tax under IC 6-9** that are due currently;
- (2) is seeking a transfer and the applicant has not paid all the property taxes under IC 6-1.1 **and innkeeper's tax under IC 6-9** for the assessment periods during which the transferor held the permit; or
- (3) is on the most recent tax warrant list supplied to the commission by the department of state revenue.

(b) The commission shall issue, renew, or transfer a permit that the commission denied under subsection (a) when the appropriate one (1) of the following occurs:

- (1) The person, if seeking a renewal, provides to the commission a statement from the county treasurer of the county in which the property of the applicant was assessed indicating that all the

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property taxes under IC 6-1.1 **and, in a county where the county treasurer collects the innkeeper's tax, the innkeeper's tax under IC 6-9** that were delinquent have been paid.

(2) The person, if seeking a transfer of ownership, provides to the commission a statement from the county treasurer of the county in which the property of the transferor was assessed indicating that all the property taxes under IC 6-1.1 **and, in a county where the county treasurer collects the innkeeper's tax, the innkeeper's tax under IC 6-9** have been paid for the assessment periods during which the transferor held the permit.

(3) The person provides to the commission a statement from the commissioner of the department of state revenue indicating that the person's delinquent tax liability has been satisfied, **including any delinquency in innkeeper's tax if the state collects the innkeeper's tax for the county in which the person seeks the permit.**

(4) The commission receives a notice from the commissioner of the department of state revenue under IC 6-8.1-8-2(k).

(c) An applicant may not be considered delinquent in the payment of listed taxes if the applicant has filed a proper protest under IC 6-8.1-5-1 contesting the remittance of those taxes. The applicant shall be considered delinquent in the payment of those taxes if the applicant does not remit the taxes owed to the state department of revenue after a final determination on the protest is made by the department of state revenue.

(d) The commission may require that an applicant for the issuance, renewal, or transfer of a wholesaler's, retailer's, or dealer's, or other permit of any type furnish proof of the payment of a listed tax (as defined by IC 6-8.1-1-1) or taxes imposed by IC 6-1.1. The commission shall allow the applicant to certify, under the penalties for perjury, that the applicant is not delinquent in filing returns or remitting taxes.

SECTION 18. IC 7.1-3-23-43 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 43. (a) The commission may suspend the permit of a permit holder if:**

- (1) the permit holder has not paid the person who sold the permit to the permit holder in accordance with the terms of the sale;**
- (2) the seller of the permit receives a judgment against the permit holder in an action to obtain payment for the permit in accordance with the terms of the sale; and**
- (3) the seller of the permit sends a certified copy of the**

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judgment to the commission.

(b) Before suspending a certificate under this section, the commission shall provide written notice to the permit holder and conduct a hearing. The commission shall provide written notice of the suspension to the permit holder.

(c) If a person who sells a permit:

(1) sends a judgment to the commission under subsection (a); and

(2) subsequently receives full payment of the judgment; the seller shall notify the commission in a manner prescribed by the commission that the seller has received full payment of the judgment not later than ten (10) days after receiving the payment.

SECTION 19. IC 7.1-3-25 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

**Chapter 25. Product Transfer Between Wholesalers**

**Sec. 1.** As used in this chapter, "existing wholesaler" means a beer wholesaler who distributes a product at the time a successor primary source of supply acquires rights to a product under section 5 of this chapter.

**Sec. 2.** As used in this chapter, "product" means an existing brand of:

- (1) beer (as defined in IC 7.1-1-3-6); or
- (2) flavored malt beverage (as defined in IC 7.1-1-3-16.7).

**Sec. 3.** As used in this chapter, "successor" means a primary source of supply that acquires rights to a product under section 5 of this chapter.

**Sec. 4.** As used in this chapter, "successor's designee" means one (1) or more beer wholesalers designated by a successor to replace the existing wholesaler, for all or part of the existing wholesaler's territory, in the distribution of the existing product.

**Sec. 5.** A successor:

- (1) who acquires the rights to manufacture or distribute an existing product; and
- (2) who:
  - (A) does not reappoint the existing wholesaler to distribute the product;
  - (B) reduces the existing wholesaler's territory for the product; or
  - (C) offers to compensate the existing wholesaler in an amount less than the fair market value determined under section 7 of this chapter;

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must comply with this chapter. A successor's designee must also comply with this chapter.

**Sec. 6.** The successor shall notify the existing wholesaler of the successor's intent not to appoint the existing wholesaler for all or a part of the existing wholesaler's territory for the product. The successor shall mail the notice by certified mail, return receipt requested, to the existing wholesaler. The successor shall include in the notice the names, addresses, and telephone numbers of the successor's designees.

**Sec. 7.** A successor's designee shall negotiate with the existing wholesaler to determine the fair market value of the existing wholesaler's right:

- (1) to distribute the product in the existing wholesaler's territory immediately before the successor acquired rights to the product under section 5 of this chapter; and
- (2) as determined in an arms length transaction entered into without duress or threat of termination of the initial wholesaler's right described in subdivision (1).

**Sec. 8.** The existing wholesaler shall continue to distribute the product until payment of the compensation agreed to under section 7 of this chapter or awarded under section 11 of this chapter is received.

**Sec. 9. (a)** The successor's designee and the existing wholesaler shall negotiate in good faith. If the parties fail to reach an agreement not later than thirty (30) days after the existing wholesaler receives the notice under section 6 of this chapter, the successor's designee or the existing wholesaler may send a written notice to the:

- (1) other party; and
- (2) American Arbitration Association or its successor in interest;

declaring the party's intention to proceed with final and binding arbitration administered by the American Arbitration Association under the American Arbitration Association's Commercial Arbitration Rules.

(b) Notice of intent to arbitrate shall be sent, as provided in subsection (a), not later than thirty-five (35) days after the existing wholesaler receives notice under section 6 of this chapter. The arbitration proceedings shall conclude not later than forty-five (45) days after the date the notice of intent to arbitrate is mailed to a party.

**Sec. 10. (a)** The arbitration shall be conducted in the city within

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Indiana that:

(1) is closest to the existing wholesaler; and

(2) has a population of more than fifty thousand (50,000).

(b) The arbitration shall be conducted before one (1) impartial arbitrator to be selected by the American Arbitration Association. The arbitration shall be conducted in accordance with the rules and procedures of the American Arbitration Association.

Sec. 11. The arbitrator's award must be monetary only and may not enjoin or compel conduct. The arbitration is instead of all other remedies and procedures.

Sec. 12. (a) The cost of the arbitrator and any other direct costs of the arbitration shall be equally divided by the parties engaged in the arbitration. All other costs shall be paid by the party incurring them.

(b) The arbitrator shall render a decision not later than thirty (30) days after the conclusion of the arbitration unless this time period is extended by mutual agreement of the parties or by the arbitrator. The decision of the arbitration is final and binding on the parties. Under no circumstances may the parties appeal the decision of the arbitrator.

(c) A party who fails to participate in the arbitration hearings waives all rights the party would have had in the arbitration and is considered to have consented to the determination of the arbitrator.

Sec. 13. If the existing wholesaler does not receive payment of the compensation under section 7 or 11 of this chapter not later than thirty (30) days after the date of the settlement or arbitration award:

(1) the existing wholesaler shall remain the distributor of the product in the existing wholesaler's territory to at least the same extent that the existing wholesaler distributed the product immediately before the successor acquired rights to the product; and

(2) the existing wholesaler is not entitled to the settlement or arbitration award.

Sec. 14. Nothing in this chapter shall be construed to limit or prohibit good faith settlements voluntarily entered into by the parties.

Sec. 15. Nothing in this chapter shall be construed to give the existing wholesaler or a successor wholesaler any right to compensation if the existing wholesaler or successor wholesaler is terminated by the primary source of supply or predecessor source

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supplier either for failure to comply with any provision in the agreement to distribute the product or in accordance with IC 7.1-5-5-9.

SECTION 20. IC 7.1-4-4.1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. The following biennial license fee is imposed for an employee's permit:

- (1) ~~Five~~ **Fifteen** dollars ~~(\$5)~~ **(\$15)** if the permit is used only to perform volunteer service that benefits a nonprofit organization.
- (2) Thirty dollars (\$30) if subdivision (1) does not apply.

The term of a biennial employee's license is two (2) years.

SECTION 21. IC 7.1-4-4.1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. (a) This section applies to the following ~~seasonal or annual~~ **biennial** permits:

- (1) Beer retailer's permit.
- (2) Liquor retailer's permit.
- (3) Wine retailer's permit.
- (4) One-way permit.
- (5) Two-way permit.
- (6) Three-way permit.
- (7) Airplane beer permit.
- (8) Airplane liquor permit.
- (9) Airplane wine permit.
- (10) Boat beer permit.
- (11) Boat liquor permit.
- (12) Boat wine permit.
- (13) Dining car beer permit.
- (14) Dining car liquor permit.
- (15) Dining car wine permit.
- (16) Hotel seasonal permit.
- ~~(17) Supplemental retailer's permit.~~

(b) The commission shall charge a single fee for the issuance of any combination of retailer's permits issued for the same location or conveyance. ~~Except as provided in sections 10 and 11 of this chapter, the fee is equal to the sum of the amount determined under subsection (c) and the amount determined under subsection (d):~~

(c) An annual permit fee in the following amount is imposed on a retailer:

- (1) ~~Two hundred fifty~~ **Five hundred** dollars ~~(\$250);~~ **(\$500)**, if the retailer serves only beer or only wine.
- (2) ~~Five hundred~~ **Seven hundred fifty** dollars ~~(\$500);~~ **(\$750)**, if the retailer serves both beer and wine but no liquor.
- (3) ~~Seven hundred fifty~~ **One thousand** dollars ~~(\$750);~~ **(\$1,000)**,

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if the retailer serves beer, wine, and liquor.

(d) An additional fee in the following amount is imposed on a retailer

(1) Two hundred fifty dollars (\$250), if the retailer under the authority of IC 7.1-3-16.5 sells food and any combination of beer, wine, or liquor on Sunday.

(2) One thousand five hundred dollars (\$1,500) if the retailer who is not under the authority of IC 7.1-3-16.5, sells any combination of beer, wine, or liquor on Sunday.

SECTION 22. IC 7.1-4-4.1-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) This section applies to the following **biennial** permits:

- (1) Beer dealer's permit.
- (2) Liquor dealer's permit.
- (3) Malt dealer's permit.
- (4) Wine dealer's permit.

(b) The commission shall charge a single fee for the issuance of any combination of dealers' permits issued for the same location. The fee is equal to the sum of the amount determined under subsection (c).

(c) An annual permit fee in the following amount is imposed on a dealer:

(1) ~~Two hundred fifty~~ **Five hundred** dollars (~~\$250~~), (**\$500**), if the dealer sells only beer, only liquor, or only wine.

(2) ~~Five hundred~~ **Seven hundred fifty** dollars (~~\$500~~), (**\$750**), if the dealer sells:

- (A) both beer and wine but no liquor;
- (B) both wine and liquor but no beer; or
- (C) both beer and liquor but no wine.

(3) ~~Seven hundred fifty~~ **One thousand** dollars (~~\$750~~), (**\$1,000**), if the dealer sells beer, wine, and liquor.

SECTION 23. IC 7.1-4-7-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) Except as provided in subsection (b), the chairman and the department shall deposit the money collected under sections 1, 2, and 3 of this chapter daily with the treasurer of state, and not later than the fifth day of the following month shall cover: ~~them~~

- (1) **thirty-four percent (34%) of the money collected under section 1 of this chapter into the enforcement and administration fund established under IC 7.1-4-10-1; and**
- (2) **sixty-six percent (66%) of the money collected under section 1 of this chapter and money collected under sections 2 and 3 of this chapter into the state general fund of state for**

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state general fund purposes.

(b) The chairman and the department shall deposit ~~the~~ **all** money collected under IC 7.1-2-5-3, IC 7.1-2-5-8, IC 7.1-3-17.5, IC 7.1-3-17.7, IC 7.1-3-22-9, and IC 7.1-4-4.1-5 daily with the treasurer of state, and not later than the fifth day of the following month shall cover ~~them~~ **the money** into the enforcement and administration fund established under IC 7.1-4-10-1.

SECTION 24. IC 7.1-4-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. ~~Collection of Annual License Fees.~~ The chairman shall collect the required annual license fee paid in connection with the issuance of a beer retailer's permit, a beer dealer's permit, a liquor retailer's permit, a supplemental caterer's permit, a liquor dealer's permit, a wine retailer's permit, and a wine dealer's permit. ~~and a supplemental retailer's permit.~~

SECTION 25. IC 7.1-4-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. ~~Fees Deposited in Excise Fund.~~ **(a) Except as provided in subsection (b),** the chairman shall deposit the monies collected under the authority of this chapter daily with the treasurer of the state, and not later than the fifth day of the following month shall cover them into the "excise fund" to be distributed as provided in this chapter.

**(b) The chairman shall deposit the money received from the collection of the fees for a three-way permit under IC 7.1-3-20-16(f) daily with the treasurer of state, and not later than the fifth day of the following month shall transfer the money into the enforcement and administration fund of the commission under IC 7.1-4-11.**

SECTION 26. IC 7.1-4-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. ~~Distribution to State General Fund: Thirty-three and one-third percent (33 1/3%)~~ **Thirty-seven percent (37%)** of the ~~monies~~ **money** in the excise fund shall be deposited in the state general fund on the first day of June and the first day of December of each year.

SECTION 27. IC 7.1-4-9-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. ~~Distribution to Cities and Towns: Sixty-six and two-thirds percent (66 2/3%)~~ **Thirty-three percent (33%)** of the ~~monies~~ **money** in the excise fund shall, upon warrant of the state auditor, be paid into the general fund of the treasury of the city or town in which the retailer's or dealer's licensed premises are located. The money shall be paid to the treasurer of the county in which the retailer's or dealer's premises are located if they are located outside the corporate limits of a city or town.

SECTION 28. IC 7.1-4-9-7.5 IS ADDED TO THE INDIANA

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CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7.5. Thirty percent (30%) of the money in the excise fund shall be deposited in the enforcement and administration fund under IC 7.1-4-10 on the first day of June and the first day of December of each year.**

SECTION 29. IC 7.1-4-11-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2.5. The chairman shall deposit the money received from the collection of the fees for a three-way permit under IC 7.1-3-20-16(f) daily with the treasurer of state, and not later than the fifth day of the following month shall transfer the money into the enforcement and administration fund.**

SECTION 30. IC 7.1-5-5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 7. (a) It is unlawful for a permittee in a sale or contract to sell alcoholic beverages to discriminate between purchasers by granting a price, discount, allowance, or service charge which is not available to all purchasers at the same time. However, this section does not authorize or require a permittee to sell to a person to whom ~~he~~ the permittee is not authorized to sell under this title.**

(b) A premises that operates at least two (2) restaurants that are separate and distinct from each other on the same premises may provide for a different schedule of prices in each restaurant if each restaurant conforms to all other laws and rules of the commission regarding pricing and price discrimination in its separate and distinct areas.

(c) This section does not apply to the holder of an excursion and adjacent landsite permit that complies with IC 7.1-3-17.5-6.

**(d) Notwithstanding subsection (a), a beer wholesaler may offer a special discount price to a beer dealer or beer retailer for beer or flavored malt beverage, if the beer or flavored malt beverage:**

- (1) is a brand or package the beer wholesaler has discontinued; or**
- (2) will expire in not more than:**
  - (A) twenty (20) days for packaged beer or packaged flavored malt beverage; and**
  - (B) ten (10) days for draft beer or draft flavored malt beverage.**

**(e) The special discount under subsection (d) only applies to beer or flavored malt beverage that will expire and be subject to removal from retailer or dealer shelves in accordance with the primary source of supply's coding data clearly identified on the**

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container.

(f) Any beer or flavored malt beverage sold at a special discount price under subsection (d) shall be accompanied by an invoice clearly designating, in addition to all other information required by law, all the following information:

- (1) The date of delivery.
- (2) The expiration date of each brand, package type, and quantity delivered.
- (3) The per unit price for each package.

SECTION 31. IC 7.1-5-5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 9. ~~Un equitable Termination of Contract Prohibited~~. It is unlawful for a beer wholesaler or a brewer in this state, or a brewer or other person located outside this state who sells beer to a permittee in this state for the purpose of importation and resale within this state **primary source of supply** to:

- (1) coerce, or attempt to coerce, or persuade a beer wholesaler to enter into an agreement, or to take an action, which will violate, or tend to violate, a provision of this title or of the rules and regulations of the commission; or
- (2) cancel or terminate an agreement or contract between a beer wholesaler and a ~~brewer~~ **primary source of supply** for the sale of beer, unfairly and without due regard for the equities of the other party.

SECTION 32. IC 7.1-5-5-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) Except as provided in ~~subsection~~ **subsections (c) and (d)**, it is unlawful for a manufacturer of alcoholic beverages or a permittee authorized to sell and deliver alcoholic beverages to:

- (1) give, supply, furnish, or grant to another permittee who purchases alcoholic beverages from him a rebate, sum of money, accessory, furniture, fixture, loan of money, concession, privilege, use, title, interest, lease, or rental of premises; or
- (2) except as provided in IC 7.1-3-2-9 and IC 7.1-3-3-5(f), have a business dealing with the other permittee.

(b) This section shall not apply to the sale and delivery and collection of the sale price of an alcoholic beverage in the ordinary course of business.

(c) If the promotional program is approved under the rules adopted by the commission and is conducted in all wholesaler establishments through which the manufacturer distributes alcoholic beverages in Indiana, a manufacturer of alcoholic beverages may award bona fide promotional prizes and awards to any of the following:

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- (1) A person with a wholesaler's permit issued under IC 7.1-3.
- (2) An employee of a person with a wholesaler's permit issued under IC 7.1-3.

**(d) A manufacturer may offer on a nondiscriminatory basis bona fide incentives to wholesalers when the incentives are determined based on sales to retailers or dealers occurring during specified times for specified products. The incentive may be conditioned on the wholesaler selling a:**

- (1) specified product at a specified price or less than a specified price; or**
- (2) minimum quantity of a specified product to a single customer in a single transaction.**

**The incentive may not be conditioned on a wholesaler having total sales of a minimum quantity of a specified product during the applicable period.**

SECTION 33. IC 7.1-5-7-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) The provisions of sections 9 and 10 of this chapter shall not apply if the public place involved is one (1) of the following:

- (1) Civic center.
- (2) Convention center.
- (3) Sports arena.
- (4) Bowling center.
- (5) Bona fide club.
- (6) Drug store.
- (7) Grocery store.
- (8) Boat.
- (9) Dining car.
- (10) Pullman car.
- (11) Club car.
- (12) Passenger airplane.
- (13) Horse racetrack facility holding a recognized meeting permit under IC 4-31-5.
- (14) Satellite facility (as defined in IC 4-31-2-20.5).
- (15) Catering hall under IC 7.1-3-20-24 that is not open to the public.
- (16) That part of a hotel or restaurant which is separate from a room in which is located a bar over which alcoholic beverages are sold or dispensed by the drink.
- (17) Entertainment complex.
- (18) Indoor golf facility.
- (19) A recreational facility such as a golf course, bowling center,

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or similar facility to which ~~IC 7.1-3-16.5-2(c)~~ applies: **that has the recreational activity and not the sale of food and beverages as the principal purpose or function of the person's business.**

(20) A licensed premises owned or operated by an educational institution of higher learning (as defined in IC 20-12-15-1).

(21) An automobile racetrack.

(b) For the purpose of this subsection, "food" means meals prepared on the licensed premises. It is lawful for a minor to be on licensed premises in a room in which is located a bar over which alcoholic beverages are sold or dispensed by the drink if all the following conditions are met:

(1) The minor is eighteen (18) years of age or older.

(2) The minor is in the company of a parent, guardian, or family member who is twenty-one (21) years of age or older.

(3) The purpose for being on the licensed premises is the consumption of food and not the consumption of alcoholic beverages.

SECTION 34. IC 7.1-3-16.5 REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 35. **An emergency is declared for this act.**

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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

Approved: \_\_\_\_\_

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Governor of the State of Indiana

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